

PATENT  
 Attorney Docket No. 102.0003-05000  
 Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                            |   |                        |
|----------------------------|---|------------------------|
| In re Application of:      | ) | Confirmation No. 1113  |
| Gary K. Michelson, M.D.    | ) |                        |
| Serial No.: 10/692,545     | ) | (Group Art Unit: 3731) |
| Filed: October 24, 2003    | ) | (Examiner: U. Ho)      |
| For: DISTRACTOR FOR USE IN | ) |                        |
| SPINAL SURGERY             | ) |                        |

Mail Stop AMENDMENT  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

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SEP 10 2004

Sir:

**FOURTH REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604**

Applicant hereby requests an interference with U.S. Application No. 10/455,678 (U.S. Publication No. 2003/0199871) to Foley et al. (hereinafter, "Foley") pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claims 1, 10-12, 15, 16, 22, 23, and 26 of Foley correspond to claims 1-9, respectively, of the proposed count. Claims 41-49 of the present application correspond to claims 1-9, respectively, of the proposed count.

Applicant requests an interference with Foley because the aforementioned claims of Foley cover subject matter which was invented by Applicant prior to the earliest priority date of Foley.

Applicant submits that the subject matter of claims 1-9 of the proposed count are fully supported by Applicant's original disclosure, for example, on page 24, line 13 to page 25, line 17; page 26, lines 6-13 and 18-21; and page 27, lines 15-19; and Fig. 7F.

The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/455,678.


If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Fourth Request for Interference 9-10-04

Respectfully submitted

MARTIN & FERRARO, LLP

Date: September 10, 2004

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**PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)**

1. A method of restoring disc height between adjacent vertebrae of a patient, the method comprising:
  - inserting a cannula through the skin and tissue of the patient to create a working channel to the disc space;
  - distracting the disc space to a disc space height with a distractor extending through the working channel into the disc space;
  - inserting an instrument through the working channel;
  - positioning a distal portion of the instrument adjacent a distal portion of the distractor in the disc space; and
  - performing a procedure in the disc space with the instrument.
2. The method according to claim 1, wherein performing the procedure includes removing disc material from the disc space through the working channel.
3. The method according to claim 1, wherein performing the procedure includes removing endplate material from the disc space through the working channel.
4. The method according to claim 1, further comprising Inserting at least one implant through the working channel into the disc space.
5. The method according to claim 1, wherein distracting the disc space includes sequentially distracting the disc space to the desired disc space height.
6. A method of preparing a disc space for insertion of an implant between adjacent vertebral endplates of a patient, the method comprising:
  - inserting a cannula through the skin and tissue of the patient to create a working channel to the disc space;
  - distracting the disc space to a disc space height by positioning a distractor in the disc space, the distractor being attached to a stem that extends through the working channel, the distractor including a body portion extending between a leading end and a trailing end, the body portion including an upper surface for contacting one of the adjacent vertebral endplate and an opposite lower surface for contacting the other of the adjacent vertebral endplates and opposite first and second sidewalls extending between the upper and lower surfaces; and
  - cutting the adjacent vertebral endplates to form an implant insertion

location while maintaining distraction with the distractor.

7. The method according to claim 6, wherein cutting the adjacent vertebral endplates includes removing endplate material from the disc space through the working channel.
8. The method according to claim 6, further comprising inserting at least one implant through the working channel into the disc space.
9. The method according to claim 6, wherein distracting the disc space includes sequentially distracting the disc space to the desired disc space height.